HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.574 of 2007

Between:

The Depot Manager, APSRTC, Parkal
Bus Depot, Warangal District.

... Appellant

And

P. Devendar Reddy and two others

... Respondents

::JUDGMENT::

Counsel for the appellant: Smt.P. Rajani

Counsel for respondent No.1: Shri M. Srinivasa Rao for
Shri M. Surender Rao

July 16, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 11.4.2007 passed by the learned Single Judge in Writ Petition No.11641 of 1998 whereby he set aside the award passed by Presiding Officer, Industrial Tribunal-cum-Labour Court, Warangal (hereinafter referred to as 'the Tribunal') in I.D.No.45 of 1994 and ordered re-appointment of respondent No.1 – P. Devendar Reddy.

Respondent No.1 was appointed as Conductor in Warangal

Depot (Warangal District) of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') in 1990. After sometime, he was transferred to Parkal Depot of the Corporation. On 14.5.1993, bus No.AP-9Z-656, which was plying on Parkal to Gaddamutharam route, was checked by the checking officials of the Corporation at Stage No.9. The checking party discovered that the Conductor (respondent No.1 herein) had committed cash and ticket irregularities. On the report of the checking party, an enquiry was instituted against respondent No.1 on the following charges:

Charges:

1. For having violated the rule 'Issue and Start'.
2. Three passengers (Adults -1 chargeable child) boarded the bus at Challagariga and bound for Garimillapally on Stages 5 to 11. You have collected the requisite fare amount of Rs.5.25 per adult and Rs.2.75 per child totally Rs.13.25 from them at their boarding stage itself, but issued three tickets of Rs.2-00 denomination bearing Nos.089/869050 to 052 which were already sold and accounted for in the SR. at Stage No.1 in 19-35 hrs. trip in spite of collecting the requisite fare amount from them at their boarding stage itself, which amounts to misconduct under Reg.No.28 (xiii) and (xxv) of APSRTC Employees (Conduct) Reg., 1963.
3. For having failed to close the try number of all the denominations against the Stage Nos.6 to 9.
4. For having instigated the passengers and created trouble for not giving the passengers statement.
5. For having used unparliamentary language against the TTIs and insulted them before the passengers; and
6. For having refused to acknowledge the receipt of Charge memo on the spot.

The enquiry officer submitted report with the findings that all the charges have been proved against the delinquent. The Depot Manager accepted the enquiry report and passed order whereby respondent No.1 was removed from service. The latter challenged

the same by filing an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), as amended by Andhra Pradesh Act No.32 of 1987. He pleaded that the enquiry held against him was not fair; that the findings recorded by the enquiry officer are not based on correct appreciation of evidence and that the punishment is wholly arbitrary and disproportionate to the misconduct found proved.

In the counter filed by the appellants, it was averred that the workman had been removed because he was found guilty of cash and ticket irregularities and abusing the members of the checking party.

On the pleadings of the parties, the learned Presiding Officer of the Tribunal framed the following issues:

Issues:

1. Whether the petitioner was given fair and reasonable opportunity during the domestic enquiry and if so whether the domestic enquiry is valid?
2. Whether the charges framed against the petitioner were proved and if so whether the respondent is justified in passing an order of removal from service?
3. Whether the order of removal is disproportionate with the proved misconduct and if so, to what relief the petitioner is entitled to?

After considering the record of enquiry and hearing the representatives of the parties, the learned Presiding Officer held that the enquiry was fair and proper and there was no violation of the rules of natural justice; that the findings recorded by the enquiry officer are based on correct appreciation of evidence and that there is no valid ground to interfere with the punishment imposed by the competent authority. Accordingly, he answered the reference against respondent No.1. Paragraphs 7 and 8 of the award dated 31.1.1998

passed by the Tribunal, which contains detailed analysis of the enquiry report and the findings recorded by the enquiry officer read as under:

7. Six charges were framed against the petitioner and the first charge is that he violated the rule 'Issue and Start'. The checking officials found that he issued tickets to 3 passengers (two adult and one chargeable child) who boarded the bus at Challagariga and bound for Garimillapally. The petitioner collected entire fare of Rs.5-25 ps., for each adult and Rs.2.75 per child. But issued three tickets of Rs.2/- denomination bearing Nos.088/869050 to 052 which were already sold and accounted in the S.R. at Stage No.1. Sri A.N.Rao, T.T.I. of R.K.S., Warangal and examined during the domestic enquiry and the petitioner cross-examined the said witness and he deposed that the petitioner sold three tickets of Rs.2/- denomination to the passengers referred in charge No.2 which were already accounted in the S.R. A.N.Rao also deposed with regard to the fact that the petitioner failed to close the try numbers and the petitioner instigated the passengers and created trouble for not giving the passengers statements. He also deposed that the petitioner used unparliamentary language and insulted them. The petitioner refused to attest the charge memo. He further deposed that the petitioner belonged to Jadalapeta and therefore there was no cooperation of serious cash and ticket irregularities. The petitioner used unparliamentary language. Sri A.N.Rao, TTI was employed in RMS, Warangal and no motives are attributed to him as to why he should depose false against the petitioner and when the petitioner was questioned by the enquiry officer whether he would examine the other TTI, the petitioner answered in negative and therefore the other TTI was not examined. The statement given by the passengers on the spot would reveal that the petitioner though collected the requisite fare issued three tickets for Rs.2/- denomination and the said statement was attested by the petitioner. The petitioner himself gave an explanation on the spot, wherein he admitted that he collected the said amount of Rs.13-25 ps. and in hurry he issued three tickets of Rs.2/- denomination. On verification, it was found that the said tickets were already accounted for in the S.R. The petitioner has not closed the try numbers of all denominations. The Special Report sent by the Regional Enforcement Squad, Warangal it was mentioned that the petitioner prevented the passengers from giving statements and used unparliamentary language against them and thus all the charges framed against the petitioner are proved and the enquiry officer has not committed any error in coming to the conclusion that the charges framed against the petitioner are proved. I have gone through the entire enquiry file and the statements of the passengers, the petitioner and the statement given by the

checking officials Sri A.N.Rao and I am satisfied that all the charges framed against the petitioner are proved and therefore the respondent is justified in confirming the findings of the enquiry officer.

8. The respondent passed an order of removal of the petitioner from service. The advocate for the petitioner contended that it is harsh punishment and hence a lenient view may be taken against the petitioner. The charges framed against the petitioner are grave in nature. The petitioner issued tickets of denomination of Rs.2/- to three passengers, though he collected the requisite fare from them and the said tickets were already issued and already accounted for in the SR. the issue of used tickets by the petitioner would only show the mala fide intention to defraud the revenues of the Corporation. Further, as per the report of the Regional Enforcement Squad, the petitioner instigated the passengers not to give statements and he used unparliamentary language against the checking officials and he failed to close the try numbers of all denominations against Stage Nos.6 to 9. In view of the fact that the petitioner is guilty of grave charges, the respondent having confirmed the findings of the Enquiry Officer rightly passed an order of removal, which is commensurate with the proved misconduct. In view of the fact that the petitioner instigated the passengers for not giving any statement and used unparliamentary language against the checking officials, the petitioner does not deserve any mercy and he is not entitled to be reinstated, in view of the proved misconduct. Considering the facts and circumstances of the case, the orders of the removal passed by the respondent is just, proper and there are no grounds to set aside the order of the respondent. Thus, I answer the point in favour of the respondent and against the petitioner and there are no merits in the petition and the petition is liable to be dismissed.

Respondent No.1 challenged the award in Writ Petition No.11641 of 1998. The learned Single Judge held that only three charges i.e. charge Nos.1, 2 and 6 can be treated as proved; that the charges were trivial in nature and the punishment imposed by the disciplinary authority was disproportionate to the misconduct alleged against the petitioner (respondent No.1 herein). Accordingly, he allowed the writ petition and directed that the workman be appointed as a fresh Conductor.

Smt.P. Rajani submitted that the award of the Tribunal was

based on a comprehensive and correct analysis and evaluation of the evidence produced during the domestic enquiry and the learned Single Judge committed a serious error by re-evaluating the evidence and holding that three of the charges levelled against the writ petitioner (respondent No.1 herein) have not been proved. She emphasized that respondent No.1 was found guilty of financial delinquency and argued that the learned Single Judge committed a serious error by directing his re-appointment as Conductor ignoring the cogent reasons assigned by the Tribunal for not exercising power under Section 11-A of the Act. Shri M. Srinivas Rao supported the order of the learned Single Judge and argued that the direction given for re-appointment of respondent No.1 does not suffer from any patent legal infirmity warranting interference under Clause 15 of the Letters Patent.

We have given serious thought to the entire matter. The parameters for exercise of High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal etc., as a result of the appreciation of evidence,

cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court of Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari. – **Syed Yakoob v. K.S. Radhakrishnan and others**[1], **Shaik Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[2], **R.S. Saini v. State of Punjab and others**[3], **Mohd. Shahnawaz Akhtar and another v. I ADJ Varanasi & ors.**[4] and **Surya Dev Rai v. Ram Chander Rai**[5].

In Writ Petition No.9840 of 1997 – C. Rami Reddy v.

The Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District and another, decided on 04.4.2007, one of us (the Chief Justice) considered the question whether the Labour Court/Industrial Tribunal or for that reason this Court can interfere with the discretion exercised by the employer to remove the conductor from service on the charge of financial misdemeanor and observed:

> "While adjudicating such matters, the Court has to keep in mind that a Conductor serving the Corporation plays an important role in collection of the revenue, which, ultimately, constitutes the part of fund on which the Corporation carries its business, industry and undertaking. If an employee belonging to that cadre is found guilty of financial misdemeanor, then he has to be dealt with appropriate seriousness and adequately punished. Generally speaking, the employees of the Corporation, as other employees of the government and its agencies/instrumentalities, are trustees of public faith and confidence and are expected to serve the organization with complete devotion, honesty and commitment. If an employee is found guilty of misappropriation of public funds, corruption, dishonesty, fraud, etc., then he has no right to remain in service. The employer is duty bound to show him the door as early as possible. In this connection, reference can usefully be made to the judgments of this Court in **Andhra Pradesh State Road Transport Corporation v. Additional Judge, Labour Court-cum-Industrial Tribunal**[6] and of Gujarat High Court in **Gujarat State Road Transport Corporation v. Jamnadas Behari Bhai**[7]."

We shall now consider whether the present one was a fit case for exercise of power by the Tribunal under Section 11-A of the Act and whether the learned Single Judge committed an error by interfering with the discretion exercised by the employer to remove respondent No.1 from service.

Section 11-A of the Act, which has been interpreted in several judicial pronouncements, reads as under:

> **"11-A. Power of Labour Courts, Tribunals and National**

Tribunals to give appropriate relief in case of discharge or dismissal of Workmen:-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

By enacting the above reproduced provision, the Parliament has conferred statutory power on the Labour Courts/Tribunals/National Tribunals to give appropriate relief in the cases of discharge or dismissal of workmen. By exercising power under Section 11-A the Labour Courts/Tribunals/National Tribunals are entitled to set aside an order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions as it thinks fit. However, power under Section 11-A can be exercised only on fulfillment of the conditions enumerated in that Section, namely, that the Labour Court/Tribunal or the National Tribunal must be satisfied that the order of discharge or dismissal was not justified. However, conferment of wide power on the Labour Court/Tribunal or National Tribunal to set aside the order of discharge or dismissal does not mean that in each and every case the Labour Court/Tribunal or National Tribunal has got untrammeled power to interfere with the punishment imposed by the employer. The power has to be exercised only after the Labour Court, Tribunal or National Tribunal is

satisfied that the order of discharge or dismissal is disproportionate to the charges leveled against the delinquent. The satisfaction of the Labour Court, Tribunal or National tribunal is not a subjective satisfaction but clearly an objective satisfaction. This obviously involves application of mind by the Labour Court, Tribunal or National Tribunal on various relevant circumstances, like the nature of delinquency committed by the workman, his past conduct, the impact of the delinquency on the employer's business/industry as also the total length of service rendered by the workman. That apart, the Labour Court, Tribunal or National Tribunal is required to consider as to whether the decision taken by the Management is just or not. Only after due consideration of these factors, the Labour Court, Tribunal or National Tribunal can upset the punishment imposed by the employer. Interference cannot be done by the Labour Court, Tribunal or National Tribunal with the quantum of punishment without recording a specific finding in the manner aforesaid and after consideration of the material circumstances.

In **Workmen v. Firestone Tyre and Rubber Co.**[8], the Supreme Court considered the background in which Section 11-A was inserted in the Act and laid down the following propositions:

> "Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.
>
> We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to

consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under S.11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such

circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S.11A.

The Legislature in S.11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal."

In **Engineering Laghu Udyog Employees Union v. Judge, Labour Court and Industrial Tribunal**[9], a three Judges Bench of the Supreme Court referred to various judicial precedents including the often-quoted judgment in **Workmen v. Firestone Tyre and Rubber Co.** (supra) and held**:**

"Section 11-A of the Industrial Disputes Act, 1947 (for short "the Act") confers a wide power upon the Labour Court, Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While adjudicating on a reference made to it, the Labour Court, Tribunal or the National Tribunal, as the case may be, if satisfied that the order of discharge or dismissal was not justified, may, while setting aside the same, direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman

including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Thus, only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the same can be set aside."

In **Mahindra and Mahindra v. N.D., Narawade**[10], the Supreme Court held as under:

> "After introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the work concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Supreme Court and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot be way of sympathy alone exercise the power under Section 11-A and reduce the punishment."

In **M.P. Electricity Board v. Jagdish Chandra Sharma**[11], the Supreme Court interpreted Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960, which is pari materia to Section 11-A of the Act, and held:

> "The scope of Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 is the same as that of Section 11-A of the Industrial Disputes Act, 1947. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. The Tribunal or the Labour Court cannot interfere with the quantum of

punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. The jurisdiction vested with the Labour Court to interfere with punishment is not to be exercised capriciously and arbitrarily. It is necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it can interfere to reduce the punishment. When charges proved are grave vis-à-vis the establishment, interference with punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 f the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charge proved."

In **Hombe Gowda Educational Trust v. State of Karnataka**[12], the Supreme Court interpreted Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, which is pari materia to Section 11-A of the Act, and held:

> "The Tribunal's jurisdiction under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 is akin to one under Section 11-A of the Industrial Disputes Act, 1947. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. Such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment."

In **South Indian Cashew Factories Workers' Union v. Kerala State Cashew Development Corporation**[13], the Supreme Court reiterated that in exercise of power under Section 11-A, the Tribunal cannot sit in appeal over the findings recorded in the

disciplinary proceedings and held:

> "If the enquiry is fair and proper then in the absence of any allegations of victimisation or unfair labour practice the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But, that section is applicable only in the case of dismissal or discharge of a workman. Since section 11-A was not applicable, the Labour Court had no power to reappraise the evidence to find out whether the findings of the enquiry officer were correct or not whether the punishment imposed was adequate or not."

We may now notice some decisions, which have bearing on the High Court's power to interfere with the disciplinary proceedings and the order of punishment.

I n **State of Orissa v. Bidyabhushan Mohapatra**[14], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition, filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the

Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[15], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on

which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[16], the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[17], a three Judges Bench of the Supreme Court referred to the judgments of **Syed Yakoob** (supra), **Rly. Board v. Niranjan Singh**[18], **Bidyabhushan Mohapatra** (supra), and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record

can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

In **B.C. Chaturvedi v. Union of India**[19], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent

with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[20], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for

> procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.
>
> Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

We may now advert to the facts of this case. Admittedly, the checking party of the Corporation found that the workman had committed cash and ticket irregularities. The enquiry officer noted that the workman had collected fare from three passengers (three adult and one child), who boarded the bus at Challagariga @ Rs.5-25 ps. per adult and Rs.2.75 per child, but issued tickets of Rs.2/- denomination bearing Nos.089/869050 to 052, which were already sold and accounted in the S.R. at Stage No.9; that he used unparliamentary language and insulted the checking party and that he refused to attest the charge memo. The enquiry officer discarded the theory of mistake put forward by the workman and held that the charge of financial irregularity is proved against the workman. The learned Presiding Officer of the Tribunal independently examined the matter and approved the findings recorded by the enquiry officer.

Learned counsel for respondent No.1 could not show that the enquiry held against his client is vitiated due to violation of the rules of natural justice or that the findings recorded by the enquiry officer, which were approved by the Tribunal suffers from any error apparent on the face of the record. However, by completely ignoring the well

recognized parameters of certiorari jurisdiction, the learned Single Judge re-appreciated the evidence and held that three out of the six charges levelled against respondent No.1 are not proved. Not only this, he trivialized the grave misconduct of issuing sold tickets to the passengers and ordered re-appointment of respondent No.1.

In our opinion, the learned Single Judge was not at all justified in examining the sufficiency and adequacy of evidence produced before the enquiry officer. By doing so, he assumed the role of appellate authority and over-turned the fact based findings recorded by the enquiry officer. Another grave error committed by the learned Single Judge is that he assumed the role of the Tribunal and applied the doctrine of proportionality for nullifying the order of punishment. It need no reiteration that in exercise of the power vested in it under Section 11-A, even the Tribunal cannot interfere with the discretion exercised by the employer to impose the penalty of removal from service on an employee found guilty of financial misdemeanor, violence or other similar acts of grave misconduct. Therefore, the direction given by the learned Single Judge for re-appointment of respondent No.1 cannot be approved.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and Writ Petition No.11641 of 1998 filed by respondent No.1 is dismissed.

As a sequel to allowing the appeal, WAMP No.1124 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

July 16, 2007

C.V. NAGARJUNA REDDY, J

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[1] AIR 1964 SC 477
[2] AIR 1970 SC 61
[3] JT 1999 (6) SC 507
[4] JT 2002(8) SC 69
[5] 2003(6) SCC 675
[6] 1986-63-FJR 230
[7] 1987-I-LLN-152
[8] AIR 1973 SC 1227 = (1973) 1 SCC 813
[9] (2003) 12 SC 1
[10] (2003) 5 SCC 134
[11](2003) 5 SCC 401
[12] (2006) 1 SCC 430
[13] (2006) 5 SCC 201
[14] AIR 1963 SC 779
[15] AIR 1963 SC 1723
[16] AIR 1965 SC 1103
[17] AIR 1975 SC 2151
[18] AIR 1969 SC 966
[19] (1995) 6 SCC 749
[20] (1999) 1 SCC 759